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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,931	11/13/2003	Adrian Pfenniger	117203	6566
25944	7590	09/06/2005	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			DEVORE, PETER T	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/705,931

Applicant(s)

PFENNIGER ET AL.

Examiner

Peter T. deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/4/05, 6/7/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The indicated allowability of claim 5 is withdrawn in view of the newly discovered reference GB234619. Rejections based on the newly cited reference follows.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 9, 12, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by GB2343619 (the Great Britain reference).

The Great Britain reference discloses a toothbrush (Figures 11-13) comprising a toothbrush body (Figures 11) comprising a head with bristles 5, a neck 8, and a handle part/container holder 12, and a toothpaste container (Figure 12) comprising a dispensing head 15, a thin-walled part of the container body 13, and a handle shell part of the container body (flat portion of container, see Figure 12). Regarding claims 6, 9, and 12, the toothpaste container is retained in the handle part by a protrusion and groove/protruberance/centering star arrangement (see Figure 13). Regarding claim 14, the head further comprises a restraining element (narrower portion of orifice 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Great Britain reference.

The Great Britain reference discloses a toothbrush as discussed supra, but remains silent as to the viscosity of toothpaste or size of outlet. However, it would have been obvious to select a toothpaste viscosity and outlet size in the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Great Britain reference in view of Collins.

The Great Britain reference discloses a toothbrush as discussed supra, but does not disclose that the handle part/container holder asymmetrically engages around the container body. However, attention is directed to the Collins reference which discloses a similar toothbrush including a portion 5 of handle part/container holder asymmetrically engaging container body C for additional support of the container body. It would have been obvious to one of ordinary skill in the art to modify the handle part/container holder of the Great Britain toothbrush to asymmetrically engage around the container body in view of Collins for additional support of the container body.

Claims 7, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Great Britain reference in view of Jackson.

The Great Britain reference discloses a toothbrush as discussed supra, but does not disclose a pin/spike to seal the container. However, attention is directed to the Jackson reference which discloses a similar toothbrush including a pin/spike 17 to seal the toothpaste container when not in use. It would have been obvious to one of ordinary skill in the art to employ a pin/spike on the Great Britain toothbrush in view of Jackson to seal the toothpaste container when not in use.

Claims 11, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain in view of Voigt.

The Great Britain reference discloses a toothbrush as discussed supra, but does not disclose that the toothpaste container is translucent with a scale. However, attention is directed to the Voigt reference which discloses a similar toothbrush including a translucent toothpaste container 72 with a scale 74 so that the user can easily determine the amount of toothpaste remaining. It would have been obvious to one of ordinary skill in the art to modify the Great Britain toothpaste container to be translucent and have a scale in view of Voigt so that the user can easily determine the amount of toothpaste remaining.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

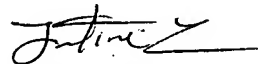
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

  
JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
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8/26/05